



**[BILLING CODE 1410-30-P]**

**LIBRARY OF CONGRESS**

**U.S. Copyright Office**

**[Docket No. 2019-6]**

**Unclaimed Royalties Study: Notice of Inquiry**

**AGENCY:** U.S. Copyright Office, Library of Congress.

**ACTION:** Notice of inquiry.

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**SUMMARY:** The U.S. Copyright Office is undertaking a study as directed by the Music Modernization Act to evaluate best practices that the newly-established mechanical licensing collective (“MLC”) may implement to: Identify and locate musical work copyright owners and unclaimed accrued royalties held by the collective; encourage musical work copyright owners to claim their royalties; and reduce the incidence of unclaimed royalties. The MLC is expected to carefully consider, and give substantial weight to, the Office’s recommendations when establishing procedures for the identification and location of musical work copyright owners and the distribution of unclaimed royalties. The Office is soliciting input from music industry participants and other interested members of the public on these issues to aid its study.

**DATES:** Written comments must be received no later than **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** at 11:59 p.m. Eastern Time. Written reply comments must be received no later than **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** at

11:59 p.m. Eastern Time. The Office will be announcing one or more public meetings, potentially virtually, by separate notice in the future.

**ADDRESSES:** For reasons of government efficiency, the Copyright Office is using the *regulations.gov* system for the submission and posting of public comments in this proceeding. All comments are therefore to be submitted electronically through *regulations.gov*. Specific instructions for submitting comments are available on the Copyright Office website at <http://copyright.gov/policy/unclaimed-royalties>. If electronic submission of comments is not feasible due to lack of access to a computer and/or the internet, please contact the Office using the contact information below for special instructions.

**FOR FURTHER INFORMATION CONTACT:** Regan A. Smith, General Counsel and Associate Register of Copyrights, by email at [regans@copyright.gov](mailto:regans@copyright.gov) or John R. Riley, Assistant General Counsel, by email at [jril@copyright.gov](mailto:jril@copyright.gov). They can be reached by telephone at 202-707-8350.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

The Orrin G. Hatch–Bob Goodlatte Music Modernization Act<sup>1</sup> significantly changed the section 115 compulsory license to make and distribute phonorecords of nondramatic musical works (the “mechanical license”). Prior to the MMA, those who wished to obtain a section 115 compulsory license were able to do so by serving a notice of intention to obtain a compulsory license (“NOI”) on the copyright owner and then paying applicable royalties accompanied by accounting statements or, if the Copyright

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<sup>1</sup> Public Law 115-264, 132 Stat. 3676 (2018) (“MMA”).

Office's records did not identify the copyright owner, by filing the notice with the Office.<sup>2</sup> Where the musical work copyright owner was not identified in the Office's records, royalties were not due.<sup>3</sup>

Frustrations with the former song-by-song licensing system's inefficiencies are well-documented, both in the legislative history and the Copyright Office's 2015 comprehensive study on the music licensing marketplace.<sup>4</sup> Digital services "complain[ed] about the lack of readily available data concerning musical work ownership" and "asserted that the inaccessibility of ownership information leads to costly and burdensome efforts to identify the rightsholders and potentially incomplete or incorrect licenses, exposing them to the risk of statutory infringement damages despite diligent efforts."<sup>5</sup> Publishers, songwriters, and licensing administrators were also frustrated with noncompliant statutory licensees, noting that NOIs were "frequently deficient, and licensees regularly fail[ed] to timely and accurately pay and report usage."<sup>6</sup> Some copyright owners sued digital music services for missing mechanical licenses,<sup>7</sup> in some

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<sup>2</sup> 17 U.S.C. 115(b)(1) (2017).

<sup>3</sup> *Id.* at 115(c)(1) (2017).

<sup>4</sup> Report and Section-by-Section Analysis of H.R. 1551 by the Chairmen and Ranking Members of Senate and House Judiciary Committees, at 3 (2018), [https://www.copyright.gov/legislation/mma\\_conference\\_report.pdf](https://www.copyright.gov/legislation/mma_conference_report.pdf) ("Conf. Rep.") ("Song-by-song licensing negotiations increase the transaction costs to the extent that only a limited amount of music would be worth engaging in such licensing discussions, depriving artists of revenue for less popular works and encouraging piracy of such works by customers looking for such music"); U.S. Copyright Office, *Copyright and the Music Marketplace* 107 (2015), <https://www.copyright.gov/docs/musiclicensingstudy/copyright-and-the-music-marketplace.pdf>.

<sup>5</sup> U.S. Copyright Office, *Copyright and the Music Marketplace* 107 (2015).

<sup>6</sup> *Id.* at 110.

<sup>7</sup> See, e.g., Dan Rys, *Tidal Hit With Lawsuit Over Royalty Payments* (Feb. 29, 2016), <https://www.billboard.com/articles/business/6890854/tidal-lawsuit-royalty-payments> (noting lawsuits against Spotify, Tidal, Slacker, Deezer, Rdio, Rhapsody, and Beats Music).

instances resulting in settlements whose terms included the establishment of online portals allowing copyright owners to claim their settlement shares.<sup>8</sup>

#### **A. Identifying and Paying Copyright Owners Under the New Blanket License**

The MMA largely eliminated the song-by-song mechanical compulsory licensing regime by establishing a new blanket compulsory license that digital music providers may obtain to make digital phonorecord deliveries (“DPDs”) of musical works, including in the form of permanent downloads, limited downloads, or interactive streams.<sup>9</sup> Instead of licensing one song at a time by serving NOIs on individual copyright owners, the blanket license will cover all musical works available for compulsory licensing and will be centrally administered by a new entity called the mechanical licensing collective (“MLC”), which was designated last summer by the Copyright Office.<sup>10</sup> Following a present transition period, the MLC will begin administering the blanket license on what the statute terms the “license availability date,” or January 1, 2021.<sup>11</sup> The MMA’s legislative history explains that the blanket licensing structure is designed to improve efficiency by allowing digital music services to offer “as much music as possible,” while “ensuring fair and timely payment to all creators” of the musical works used on these digital services.<sup>12</sup>

By consolidating musical work usage and ownership data and royalty distributions with the MLC, the MMA aims to improve the preexisting problems of

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<sup>8</sup> See, e.g., *Ferrick v. Spotify USA Inc.* (last updated Mar. 30, 2020), <https://spotifypublishingsettlement.com>.

<sup>9</sup> The mechanical compulsory license for non-DPDs (e.g., CDs, vinyl) continues to follow the preexisting song-by-song NOI system.

<sup>10</sup> 17 U.S.C. 115(b)(1), (c)(5) (2017); 84 FR 32274 (July 8, 2019).

<sup>11</sup> 17 U.S.C. 115(d)(2)(B), (e)(15).

<sup>12</sup> S. Rep. No. 115-339, at 4, 8 (2018).

missing data and incomplete royalty payments. Digital music providers using the blanket license are required to pay royalties and provide reports of usage for all covered activities to the MLC on a monthly basis.<sup>13</sup> The MLC will collect those royalties and distribute them to musical work copyright owners in accordance with the digital service providers' usage reports and the ownership and other information contained in the MLC's records, including its public database.<sup>14</sup>

*1. The MLC's Public Musical Works Database*

The MLC's musical works database will contain information relating to musical works (and shares of such works), including, to the extent known, the identity and location of the copyright owners of such works and the sound recordings in which the musical works are embodied.<sup>15</sup> Accurately identifying musical works and their associated sound recordings and owners requires reliable data throughout the statutory licensing ecosystem. To this end, as explained in more detail in separate notices published by the Office,<sup>16</sup> the MMA outlines roles for digital music providers, musical work owners, and the MLC in providing, reporting, and curating accurate music data.

Digital music providers operating under the blanket license will “engage in good-faith, commercially reasonable efforts to obtain” various sound recording and musical work information from sound recording copyright owners and other licensors of sound recordings made available through the digital music providers' services.<sup>17</sup> These digital

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<sup>13</sup> 17 U.S.C. 115(e)(7), (d)(4).

<sup>14</sup> *Id.* at 115(d)(3)(G)(i)(II).

<sup>15</sup> *Id.* at 115(d)(3)(E)(i).

<sup>16</sup> 85 FR 22549 (Apr. 22, 2020); 85 FR 22518 (Apr. 22, 2020).

<sup>17</sup> 17 U.S.C. 115(d)(4)(B); *see also* 85 FR at 22521–25.

music providers will deliver reports of usage to the MLC containing usage data for musical works used in covered activities under the blanket license, voluntary licenses, and individual download licenses.<sup>18</sup> Certain entities engaging in covered activities pursuant to voluntary licenses or individual download licenses, but that do not operate under a blanket license (called significant nonblanket licensees), will also submit reports of usage to the MLC.<sup>19</sup> And musical work copyright owners with works listed in the MLC’s database will “engage in commercially reasonable efforts to deliver” to the MLC if not already listed in the database, “information regarding the names of the sound recordings in which that copyright owner’s musical works (or shares thereof) are embodied, to the extent practicable.”<sup>20</sup> On April 22, 2020, the Office issued a notice of proposed rulemaking discussing these matters in more detail and seeking public comment on proposed regulatory language to govern these obligations.<sup>21</sup>

Once these inputs are provided to the MLC, it will engage in efforts “to identify the musical works embodied in particular sound recordings, as well as to identify and locate the copyright owners of such works (and shares thereof), and update such data as appropriate.”<sup>22</sup> The MMA’s legislative history describes this duty to locate and identify musical work owners as the MLC’s “highest responsibility,” next to the MLC’s “efficient and accurate collection and distribution of royalties.”<sup>23</sup> The Senate Judiciary Chairman

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<sup>18</sup> 17 U.S.C. 115(d)(4)(A); *see also* 85 FR at 22526–35. The statute prescribes categories of information that must be included in reports of usage, including a provision for the Copyright Office to prescribe additional categories by regulation. 17 U.S.C. 115(d)(4)(A)(ii)(I).

<sup>19</sup> 17 U.S.C. 115(d)(6)(A)(ii), (e)(31); *see also* 85 FR at 22535–36.

<sup>20</sup> 17 U.S.C. 115(d)(3)(E)(iv); *see also* 85 FR at 22525–26.

<sup>21</sup> 85 FR 22518.

<sup>22</sup> 17 U.S.C. 115(d)(3)(E)(i).

<sup>23</sup> Conf. Rep. at 7.

subsequently reaffirmed this sentiment, writing to the Office that “[a]ll artists deserve to be fully paid for the uses of their works [and] . . . [r]educing unmatched funds is the measure by which the success of this important legislation should be measured.”<sup>24</sup>

Information for both matched and unmatched works will be provided in the MLC’s public musical works database, and the statute lists a number of fields that must be included with respect to matched and unmatched works.<sup>25</sup> In addition, the Office may promulgate regulations to require additional information to be included in the MLC’s database,<sup>26</sup> and must also “establish requirements by regulations to ensure the usability, interoperability, and usage restrictions of the musical works database.”<sup>27</sup> The Office has recently published a notification of inquiry soliciting information on these topics.<sup>28</sup>

For those musical works (or shares thereof) that are unmatched, copyright owners will be able to come forward and assert ownership claims by viewing the MLC’s public database, including through a public online portal.<sup>29</sup> The MLC has announced intentions that its claiming portal, expected to premiere in the third quarter of this year, will be “user-friendly, ADA-compliant, and can be used by stakeholders of any sophistication.”<sup>30</sup>

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<sup>24</sup> Letter from Lindsey Graham, Chairman, Senate Judiciary Committee, to Karyn Temple, Register of Copyrights 1 (Nov. 1, 2019) (on file with Copyright Office).

<sup>25</sup> 17 U.S.C. 115(d)(3)(E)(ii), *id.* at 115(d)(3)(E)(iii)(I).

<sup>26</sup> *Id.* at 115(d)(3)(E)(ii)(V), (iii)(II).

<sup>27</sup> *Id.* at 115(d)(3)(E)(vi).

<sup>28</sup> 85 FR 22568 (Apr. 22, 2020).

<sup>29</sup> 17 U.S.C. 115(d)(3)(J)(iii)(I).

<sup>30</sup> Mechanical Licensing Collective, Designation Proposal at 37, U.S. Copyright Office Dkt. No. 2018–11 (Mar. 22, 2019), <https://www.regulations.gov/document?D=COLC-2018-0011-0012> (“MLC Designation Proposal”).

For technologically sophisticated entities, the MLC will also use “APIs and data transfer processes and formats to allow for bulk submission and updating of rights data.”<sup>31</sup>

## 2. *Education and Outreach*

Congress has directed the MLC to “engage in diligent, good-faith efforts to publicize, throughout the music industry . . . the procedures by which copyright owners may identify themselves and provide contact, ownership, and other relevant information to the collective in order to receive payments of accrued royalties.”<sup>32</sup> The digital licensee coordinator (“DLC”) (an entity that was designated by the Copyright Office to represent the interests of digital services pursuant to the statute), and Copyright Office also have roles in educating copyright owners and songwriters about the existence of the MLC and its role in the new blanket license system.<sup>33</sup> For the DLC, this includes encouraging digital music providers to post the MLC’s contact information on services’ websites and applications and conduct in-person songwriter outreach.<sup>34</sup> The Copyright Office has engaged in several activities to fulfill its educational duties thus far, including by establishing a MMA-related webpage with FAQs, informational handouts, seven MMA-related videos, three new circulars, and information related to the statute’s legislative history, as well as hosting an all-day symposium and speaking at approximately 40 in-person or virtual events.<sup>35</sup>

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<sup>31</sup> *Id.*

<sup>32</sup> 17 U.S.C. 115 (d)(3)(J)(iii)(II)(bb).

<sup>33</sup> *Id.* at 115(d)(5)(C)(i)(VII); MMA at sec. 102(e), 132 Stat. at 3722.

<sup>34</sup> 117 U.S.C. 115(d)(5)(C)(iii).

<sup>35</sup> See U.S. Copyright Office, *MMA Educational Materials*, <https://www.copyright.gov/music-modernization/educational-materials/> (last visited, May 19, 2020).



### 3. *Unclaimed, Accrued Royalties*

For those works for which royalties have accrued but the copyright owner is unknown or not located, the MLC will hold such royalties for a designated minimum time period. This holding period will provide the MLC with an additional period of time<sup>36</sup> (compared to the pre-MMA system) to engage in efforts to identify the musical works embodied in particular sound recordings, and locate their associated copyright owners, and for copyright owners and other songwriters to identify their works in the MLC database and come forward to claim their ownership interests.<sup>37</sup> In general, the MLC must hold accrued royalties for “a period of not less than 3 years after the date on which the funds were received by the [MLC], or not less than 3 years after the date on which the funds were accrued by a digital music provider that subsequently transferred such funds to the [MLC] . . . whichever period expires sooner.”<sup>38</sup> The MMA also states that the first such distribution “shall occur on or after January 1 of the second full calendar year to commence after the license availability date, with not less than 1 such

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<sup>36</sup> For works that were initially accrued by a digital music provider prior to the license availability date and then transferred to the MLC, the MLC may have as few as two years to locate the copyright owner, but the minimum total holding period for these funds will be three years. *See* 17 U.S.C. 115(d)(3)(H)(i), (3)(J)(i)(I), (10)(B)(iv)(III)(aa).

<sup>37</sup> Conf. Rep. at 11 (“For unmatched works, the collective must wait for the prescribed holding period of three years before making such distribution. This is intended to give the collective time to actively search for the copyright owner.”); *see also* U.S. Copyright Office, *Unclaimed Royalties Study: Kickoff Symposium*, Tr. at 194:18–195:01, 213:03–05 (Dec. 6, 2019) (Sarah Rosenbaum, Google) (noting that the MMA allows the music industry to address data issues in a “less time-pressured environment”). Transcripts of the Office’s symposium are cited with the abbreviation “Tr.” along with the page and line numbers, and date, of the cited material. These citations also include the name of the speaker and organization (if any) with which the speaker is affiliated. Transcripts of the symposium is available at <https://www.copyright.gov/policy/unclaimed-royalties/transcript.pdf>.

<sup>38</sup> 17 U.S.C. 115(d)(3)(H)(i).

distribution to take place during each calendar year thereafter.”<sup>39</sup> Reading these provisions together, in no case can these unclaimed royalties be distributed before 2023.<sup>40</sup>

After the holding period, the MLC “shall distribute [unmatched works’] accrued royalties, along with a proportionate share of accrued interest, to copyright owners identified in the records of the collective.”<sup>41</sup> It must also “engag[e] in diligent, good-faith efforts to publicize . . . any pending distribution of unclaimed accrued royalties and accrued interest, not less than 90 days before the date on which the distribution is made.”<sup>42</sup> Once the MLC makes an initial distribution of unclaimed, accrued royalties, “not less than 1 such distribution [shall] take place during each calendar year thereafter.”<sup>43</sup> Copyright owners’ shares of distributions of unclaimed accrued royalties will be determined by the MLC in accordance with unclaimed accrued royalties for particular payment periods, and “determined in a transparent and equitable manner based on data indicating the relative market shares of such copyright owners as reflected in reports of usage provided by digital music providers for covered activities for the periods in question” as well as available “usage data provided to copyright owners under voluntary licenses and individual download licenses for covered activities.”<sup>44</sup>

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<sup>39</sup> *Id.* at 115(d)(3)(J)(i)(I).

<sup>40</sup> *Id.*; *see also* 84 FR at 32291 (July 8, 2019) (noting “the statute does not permit the first such distribution to occur before January 1, 2023”); MLC Designation Proposal at 52 (same).

<sup>41</sup> 17 U.S.C. 115(d)(3)(J)(i).

<sup>42</sup> *Id.* at 115(d)(3)(J)(iii)(II)(dd).

<sup>43</sup> *Id.* at 115(d)(3)(J)(i)(I).

<sup>44</sup> *Id.* at 115 (d)(3)(J)(i)(II). Songwriters’ unclaimed accrued royalty shares will be paid “in accordance with applicable contractual terms,” but “in no case shall the payment or credit to an individual songwriter be less than 50 percent of the payment received by the copyright owner.” *Id.* at 115(d)(3)(J)(iv)(II).

By statute, the MLC has established an Unclaimed Royalties Oversight Committee, which will establish policies and procedures “for the distribution of unclaimed accrued royalties and accrued interest . . . including the provision of usage data to copyright owners to allocate payments and credits to songwriters,” subject to the MLC board’s approval.<sup>45</sup> During the public process of designating the collective, the MLC noted that it “does not intend to ever distribute the entirety of unclaimed royalties simultaneously,” and that it interprets section 115(d)(3)(J) “to grant discretion to MLC to retain unclaimed accrued royalties beyond the year that they become eligible for distribution, to allow diligent attempts to match all uses and works, no matter the vintage, to continue. MLC intends to implement policies allowing use of that discretion to retain unclaimed accrued royalties and continue matching efforts in situations where there is reasonable evidence that this will result in material increases in matching success.”<sup>46</sup> In designating the MLC, the Office noted its agreement with this interpretation.<sup>47</sup>

**B. Copyright Office Study on Best Practices Study, and Related Foundational Work**

To further Congress’s intent to reduce the instance of unmatched works and unclaimed royalties, the MMA directs the Copyright Office to conduct a policy study, in consultation with the Government Accountability Office, recommending best practices that the MLC may implement to:

- (A) identify and locate musical work copyright owners with unclaimed accrued royalties held by the collective;
- (B) encourage musical work copyright owners to claim the royalties of those owners; and

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<sup>45</sup> *Id.* at 115(d)(3)(J)(ii).

<sup>46</sup> MLCI Designation Proposal at 52–53.

<sup>47</sup> 84 FR at 32291.

(C) reduce the incidence of unclaimed royalties.<sup>48</sup>

The MLC must carefully consider and give substantial weight to the Office’s recommendations when establishing procedures to identify and locate musical work copyright owners and to distribute unclaimed royalties.<sup>49</sup>

### *1. Educational Symposium*

To initiate the study, the Office held an all-day educational symposium to facilitate public understanding and discussion on issues relevant to the study. The Office invited industry participants, including songwriters and other interested members of the public, to discuss topics including: (i) past and current initiatives to facilitate authoritative and comprehensive music ownership databases; (ii) challenges of matching musical works to sound recordings, including current matching methods and challenges, the role of technology, and how success can be measured; and (iii) the most effective ways to educate creators on the changes effected by the MMA. The symposium featured an update from the MLC and DLC, and a discussion among creators concerning the challenges and benefits associated with accurately capturing metadata during the creative process as well as the role of creators in taking ownership of their song data. The event concluded with an opportunity for audience participation. The Office has posted videos and a transcript of the symposium on its website, as well as a glossary of acronyms and other frequently used terms that arose during discussions.<sup>50</sup>

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<sup>48</sup> MMA at sec. 102(f)(1), 132 Stat. at 3722.

<sup>49</sup> *Id.* at sec. 102(f)(2), 132 Stat. at 3722–23.

<sup>50</sup> U.S. Copyright Office, *Unclaimed Royalties Study*, <https://www.copyright.gov/policy/unclaimed-royalties/> (last visited May 19, 2020).

While observing that the MLC’s mission shares some similarities with past music ownership database development efforts, panelists noted that the MLC lacks the funding challenges of earlier European efforts, and that it may benefit from being narrower in scope.<sup>51</sup> There was discussion on the role of standards setting, including the common works registration (“CWR”) standard format used by publishers and DDEX messaging standards; the MLC has confirmed it intends to ingest data through multiple formats, including CWR as well as through its claiming portal.<sup>52</sup> The symposium addressed other industry efforts to facilitate improved data quality, including a best practices working group established between record labels and music publishers that generated a platform called the Music Data Exchange and the Open Music Initiative, an effort to build consensus towards establishing open data protocols and promote increased education and monetization opportunities for artists.<sup>53</sup> Other panelists discussed ways to determine whether the ownership data for a work is authoritative, which may involve algorithmic matching, different levels of manual review, inspecting the Copyright Office’s records, or

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<sup>51</sup> Tr. at 79:04–07 (Dec. 6, 2019) (Michel Allain, WIPO); Tr. at 83:15–85:11 (Dec. 6, 2019) (David Hughes, Recording Industry Association of America (“RIAA”).

<sup>52</sup> Tr. at 76:10–20 (Dec. 6, 2019) (Michel Allain, WIPO) (discussing utility of CWR format as used by “main publishers” while noting that its complexity is not always accessible for smaller publishers); Tr. at 61:12–62:08, 62:16–63:14, 130:13–131:10 (Dec. 6, 2019) (Mark Isherwood, DDEX) (noting that DDEX “standardiz[es] . . . the communication of data between all the different business partners that exist within the music industry value chain” and “create[s] standard choreographies around those messages,” but “to implement DDEX standards, you’ve got to have a half-decent IT facility . . . [a]nd that immediately cuts lots of people out”); Mechanical Licensing Collective Initial Comments at 25–26, U.S. Copyright Office Dkt. No. 2019–5 (Nov. 9, 2019), <https://www.regulations.gov/document?D=COLC-2019-0002-0011> (“the MLC has joined and is working with DDEX, and continues to explore the proper formats and standards for efficient and accurate data sharing”); MLCI Designation Proposal at 37–38 (discussing the CWR format’s utility).

<sup>53</sup> Tr. at 111:15–112:05 (Dec. 6, 2019) (Nicole d’Avis, Open Music Initiative) (discussing the Open Music Initiative’s efforts); Tr. at 90:10–91:07 (Dec. 6, 2019) (David Hughes, RIAA) (discussing creation of the MDX best practice working group).

reaching directly out to rightsholders to address ownership conflicts.<sup>54</sup> Specific practices that frustrate accurate royalty payments were addressed, including instances where digital music providers may alter song titles or artist names supplied by a record label.<sup>55</sup>

Artists and others who work with creators noted the lack of a one-size-fits-all solution to educating self-administered songwriters about how the MMA may affect their interests. Singer-songwriter Rosanne Cash emphasized that increased transparency “would take so much pressure off of musicians and songwriters” and help ensure they are paid fairly.<sup>56</sup> There was agreement that talking to creators “in ways that really resonate . . . looks different in LA than it does in Miami.”<sup>57</sup> In some cases, reaching creators may involve making free educational information available in the form of blog posts, webinars, e-books, or podcasts<sup>58</sup> or it may require “peers talking to peers from their local community that have credibility.”<sup>59</sup> It was suggested that “the more information that

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<sup>54</sup> Tr. at 198:16–21, 247:01–08 (Dec. 6, 2019) (Bill Colitre, Music Reports) (noting that Music Reports uses syntax matching and unique identifiers to match works, but also “50 copyright professionals” to check the Copyright Office’s records “on a regular basis” and contact rightsholders); Tr. at 222:22–224:21 (Dec. 6, 2019) (John Raso, Harry Fox Agency) (discussing how the Harry Fox Agency approaches automated matching and the “push and pull of which way that algorithm should move” to pay royalties and avoid “bad matches”); Tr. at 231:12–232:07 (Dec. 6, 2019) (Sarah Rosenbaum, Google) (discussing using Google’s “proposer tool,” used to reach out to rightsholders when there conflicting ownership assertions).

<sup>55</sup> Tr. at 119:03–120:06 (Dec. 6, 2019) (David Hughes, RIAA); *see also* 85 FR at 22522–23.

<sup>56</sup> Tr. at 163:09–11 (Dec. 6, 2019) (Rosanne Cash).

<sup>57</sup> Tr. at 346:01– 22 (Dec. 6, 2019) (Kimberly Tignor, Institute for Intellectual Property & Social Justice); *see also* Tr. at 296:13–20, 297:02–12 (Dec. 6, 2019) (Jennifer Turnbow, Nashville Songwriters Association International) (noting that “Nashville is kind of a unicorn in the music industry because really, most of the commerce of music . . . happens on about three streets” and there is opportunity and encouragement for songwriters to talk about issues like the MMA).

<sup>58</sup> Tr. at 311:05–09 (Dec. 6, 2019) (Dae Bogan, TuneRegistry) (discussing these engagement methods).

<sup>59</sup> Tr. at 318:13–16 (Dec. 6, 2019) (Todd Dupler, Recording Academy).

songwriters have and the easier we make it for them to act on that information, the more successful [educating them] is going to be.”<sup>60</sup>

## 2. *Practices of Other Collective Management Organizations*

The Copyright Office also commissioned a report by Susan Butler, publisher of Music Confidential, to provide a factual report detailing matching and royalty distribution practices of global collective management organizations (“CMOs”). In preparing her report, Ms. Butler surveyed CMOs around the world that represent musical works (whether performing rights, mechanical rights, or both) or public performance rights in recordings (neighboring rights).<sup>61</sup> Along with the Office’s symposium, Ms. Butler’s report is designed to give commenting parties an understanding of some of the activities and practical solutions that the MLC may potentially consider, based on experiences of CMOs around the world. It also highlights some of the structural distinctions between the MLC on the one hand and the many membership-based collectives throughout the world. Ms. Butler’s report outlines several reasons why CMOs may encounter difficulty linking a recording title reported by a digital music provider to a specific musical work or specific rights holders to be able to distribute money to those rights holders, and methods that CMOs may employ in an attempt to identify and match works to recordings and rights holders, even after automated and manual methods have been employed.<sup>62</sup> The Butler report is available on the Copyright Office’s website at <https://www.copyright.gov/policy/unclaimed-royalties/CMO-report>.

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<sup>60</sup> Tr. at 291:05–08 (Dec. 6, 2019) (Todd Dupler, Recording Academy).

<sup>61</sup> Susan Butler, *Collective Rights Management Practices Around the World: A Survey of CMO Practices to Reduce the Occurrence of Unclaimed Royalties in Musical Works* 3 (2020), <https://www.copyright.gov/policy/unclaimed-royalties/CMO-full-report.pdf>.

<sup>62</sup> *Id.* at 11–13.

## **II. Subjects of Inquiry**

The Office is seeking public comment on the following topics. While the focus of the study remains on best practices that may be recommended to the MLC, the Office has previously noted that “the problems in the music marketplace need to be evaluated as a whole, rather than as isolated or individual concerns of particular stakeholders.”<sup>63</sup> Therefore, the Office is also soliciting limited input related to policies or actions that digital music providers and others may implement to reduce the instance of unclaimed royalties as well as ways to empower and educate songwriters and copyright owners to address ownership data issues themselves.

In responding to the questions below, the Office encourages commenters to provide evidentiary support for their views, including by providing empirical data if possible. A party choosing to respond to this notice of inquiry need not address every topic, but the Office requests that responding parties clearly identify and separately address each topic for which a response is submitted.

### **A. Identifying and Locating Musical Work Copyright Owners**

1. Please describe best practices that the MLC may employ in matching musical works to sound recordings and otherwise identifying and locating musical work copyright owners associated with works embodied in sound recordings pursuant to administering the blanket license. As applicable, please identify specific technological or manual approaches, as well as considerations relevant to the MLC’s prioritization of resources.

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<sup>63</sup> U.S. Copyright Office, *Copyright and the Music Marketplace* at Preface (2015).



2. Please identify any special issues with respect to the MLC's matching and distribution policies for musical works with identified, but unlocated copyright owners, or works for which only a partial amount of ownership information is available.
3. If you believe that practices of similar CMOs, here or abroad, are relevant or helpful, please identify those practices.
4. If you believe that past practices of individual digital music providers or vendors facilitating voluntary or statutory licensing are relevant or helpful, including any under the prior song-by-song licensing system, please identify those practices.
5. Are past efforts to build music ownership databases, such as the Global Repertoire Database, International Music Rights Registry, and International Music Joint Venture, helpful to consider in identifying best practices for the MLC? If so, how?

**B. Encouraging Musical Work Copyright Owners to Claim Royalties**

6. How can the MLC facilitate claiming of accrued royalties through its public database? If there are specific fields, search capabilities, or tools that would be beneficial, or not, to the MLC's core project, please identify them.
7. Please identify particular data formats or file types that would be helpful for the MLC to use in connection with encouraging copyright owners to have their works identified in the MLC's database.
8. What lessons can be learned from prior music dispute settlements and claiming systems, including the *Ferrick v. Spotify*, *Football Association Premier League v. YouTube*, and National Music Publishers' Association/Spotify settlements? What about the claiming portals or opt-in procedures for these agreements were beneficial or detrimental in encouraging copyright owners to claim accrued royalties?

9. Please identify education and outreach practices that the MLC should consider adopting in encouraging copyright owners to claim royalties.
10. Please identify activities or policies that the MLC may take or adopt to encourage groups of musical work copyright owners who may be underrepresented in the MLC's database to come forward and claim accrued royalties. Your response may consider, for example, the unique experiences of self-administered songwriters; genres expected to generate a more diffuse record of musical work ownership;<sup>64</sup> non-English language works or genres; non-U.S. based musical work copyright owners, including the role of international collection societies; and particular challenges associated with classical music metadata.

**C. Reducing Incidence of Unclaimed, Accrued Royalties and Distribution of Royalties**

11. Please identify issues for the MLC to consider in establishing policies related to its duty to distribute unclaimed accrued royalties after a prescribed holding period in a manner that incentivizes reduction in the overall incidence of unclaimed accrued royalties. In particular, identify considerations related to the timing of the initial distribution of unclaimed, accrued royalties, as well as the retention of a portion of accrued royalties in the hope that they may later be matched.
12. Please identify preferred methods for the MLC to publicize the existence of unclaimed accrued royalties before they are distributed, in light of the minimum 90-day period required by the statute.

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<sup>64</sup> See Tr. at 263:17–22 (Dec. 6, 2019) (Ed Arrow, Universal Music Publishing Group) (noting collaborative nature of rap, hip-hop, and pop music); Tr. at 264:09–11 (Dec. 6, 2019) (Bill Colitre, Music Reports) (noting that the rap song “Grillz” by Nelly has “17 writers and 23 music publishers”).

13. Please describe how success in lowering the incidence of unclaimed royalties may best be measured.

**D. Others in the Music Marketplace**

14. What actions can others, including those engaged in digital platform, sound recording, music publishing, and music creation activities, voluntarily take to contribute to a more accurate musical work data supply chain?

15. What actions can better ensure the accurate assignment of unique identifiers like the International Standard Recording Code (“ISRC”) and International Standard Musical Work Code (“ISWC”) identifiers early in the digital supply chain?

16. Please identify education and outreach practices that digital music providers and others may consider adopting in encouraging copyright owners to claim royalties.

17. Please recommend existing guides or other resources regarding music data that can be used by copyright owners and songwriters, and/or information to be included in such educational materials.

**E. Other Issues**

18. Please identify any pertinent issues not referenced above that the Copyright Office should consider in conducting its study, including any further legislative changes that you believe are needed to reduce the instance of unclaimed royalties.

**Dated:** May 28, 2020.

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**Regan A. Smith,**

*General Counsel and Associate Register of Copyrights.*

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